



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 24, 1996

Mr. Robert E. Diaz
Police Legal Advisor
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR96-0801

Dear Mr. Diaz:

You ask this office to reconsider our decision in Open Records Letter No. 96-0299 (1996), which was in response to your request for reconsideration of Open Records Letter No. 96-0059 (1996). This request for reconsideration has been assigned ID# 39482.

In both Open Records Letter Nos. 96-0059 (1996) and 96-0299 (1996), this office concluded that the City of Arlington Police Department (the "department") had failed to submit certain documentation to this office as required by section 552.301(b) and, therefore, had waived its argument that section 552.108 excepted the requested information from required public disclosure and that the information was presumed public and must be released to the requestor.

Also in both open records letters, we stated that, pursuant to section 552.303, we had notified you by facsimile that your failure to provide this office with the required documentation within seven days of the receipt of our notice would result in the legal presumption that the requested information is public.¹ Having reviewed the Facsimile Transmission Activity Report for this notice, it appears that this notice may have been sent to the wrong party. Accordingly, we withdraw our decisions in Open Records Letter

¹In Open Records Letter No. 96-0059 (1996), we stated that the notice had been sent on November 13, 1995. In Open Records Letter No. 96-0299 (1996), we stated that notices had been sent on November 13 and November 20, 1995. One notice was actually sent on November 20, 1995.

Nos. 96-0059 (1996) and 96-0299 (1996). As you have provided the required documentation along with this request for reconsideration, we now consider your arguments to withhold the requested information on the merits.

The department received an open records request for documentation relating to a stalking complaint, Case Number 950151503. The department has submitted an offense report as responsive to this request and claims that this offense report is excepted from required public disclosure under section 552.108 of the Government Code. We have considered the arguments you raise and have reviewed the information at issue.

Section 552.108-excepts from disclosure:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4. Once a case is closed, however, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See* Open Records Decision No. 553 (1990) at 4 (and cases cited therein). Moreover, the agency claiming an exception under 552.108 must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. *See* Open Records Decision No. 434 (1986) at 3.

You state that this case will not be presented for prosecution but is being "kept for future use in the event of subsequent prosecution under Penal Code Sec. 42.071 Stalking, which requires multiple events." You further state that "the report would be part of future prosecution in the event of another incident that meets the elements of" section 42.071. Although we understand that this is a closed case, we conclude, in this instance, that the department has shown how release of this information "will unduly interfere with law enforcement or crime prevention." Consequently, with the exception of the information generally found on the first page of the offense report, you may continue to withhold this information from the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 39482

Enclosures: Submitted documents

cc: Mr. Patrick Colvin
4401 Lon Stevenson Road
Fort Worth, Texas 76140
(w/o enclosures)